

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION

Before the Commissioner of the Office of Financial and Insurance Regulation

In the Matter of:

WILLIAM E. LOWDER
System ID No. 0029115

Enforcement Case No. 12-11487

Respondent.
_____ /

Issued and entered
On March 23 2012
By Annette E. Flood
Chief Deputy Commissioner

**ORDER OF SUMMARY SUSPENSION
AND
OPPORTUNITY FOR HEARING,
NOTICE OF INTENT TO REVOKE**

Pursuant to Section 1242 of the Michigan Insurance Code (Code), MCL 500.1242, and Section 92 of the Michigan Administrative Procedures Act (APA), MCL 24.292, and based upon the attached **FINDINGS**, including that the public health, safety and welfare require emergency action,

IT IS THEREFORE ORDERED that:

1. The insurance producer license(s) and authority of Respondent(s) are **SUMMARILY SUSPENDED**.
2. A copy of this Order shall be immediately served upon Respondent(s). As to any such Respondent, this Order shall be effective upon the date of service.
3. If requested by Respondent(s), a hearing on this matter shall be held within a reasonable time, but not later than 20 calendar days after service of this Order, unless Respondent(s) requests a later date. The hearing shall address the following issues:
 - a) Whether the suspension should be continued or withdrawn,
 - b) Whether Respondent(s) license(s) should be revoked.
4. If a hearing is requested, an administrative law judge from the Michigan Administrative Hearing System shall preside over any such hearing.

5. The Commissioner retains jurisdiction of the matters contained herein and the authority to issue such further Order(s) as shall be deemed just, necessary and appropriate.


Annette E. Flood
Chief Deputy Commissioner

FINDINGS

1. The Commissioner of OFIR is statutorily charged with the authority and responsibility to exercise general supervision and control over persons transacting the business of insurance in Michigan pursuant to the Code.
2. At all relevant times, William E. Lowder (Respondent) was a licensed resident producer pursuant to the Code with qualifications in Accident, Health, Life, and Variable Annuities. System ID No. 0029115.
3. OFIR received information that between November 2006 and February 2008, Respondent made several **unauthorized** financial transactions that yielded nearly **\$500,000** to his benefit. OFIR staff conducted a thorough investigation of these allegations pursuant to Section 249 of the Code, MCL 500.249(a).
4. Based upon the information as set forth below, protection of the public health, safety and/or welfare requires emergency action.
5. In September 2011, OFIR received a complaint from the son of (Consumer) alleging that Respondent had misappropriated money from his mother while acting as her financial advisor/insurance agent.
6. More specifically, sometime in 1997, Respondent began a financial advisor/insurance agent relationship with Consumer, an elderly woman, who held significant assets in various annuities, certificates of deposit, money market and other financial accounts. Between the time of November 2006 and February 2008, all or some of these assets were withdrawn or liquidated, and Respondent received sums of money from Consumer equal to or greater than the withdrawals and liquidations.
7. Respondent facilitated the withdrawal of funds from Consumer's accounts by advising her to surrender or withdraw from certain annuities, or liquidating other investment/securities accounts. Respondent completed the necessary forms to facilitate the withdrawals and submitted the forms to the appropriate financial institution. The applications were signed by both Respondent and Consumer, however, it is alleged that

Consumer did not have the mental capacity to fully understand her actions or appreciate the consequences thereof.

8. Over a period of 2 years, Respondent completed more than a dozen applications and submissions to withdraw or liquidate Consumer's assets from various accounts. Although documentation states that Consumer was in dire need of the funds, Respondent was unable to state what that need might have been.
9. Over the 2 year period, Consumer received checks representing the withdrawals and liquidations payable to her in various dollar amounts. Shortly after the Consumer received those checks, records reflect they were deposited and then checks were written from her personal checking account to Respondent in amounts equal to or greater than the financial institution checks received by the Consumer. Although the checks were allegedly signed by Consumer, the "pay to the order of" and "amount" lines were completed by Respondent. Respondent endorsed each of the checks and deposited the checks into accounts he either owned or controlled. Records reflect that nearly \$500,000 of Consumer's money was transferred from Consumer's accounts to Respondent's bank accounts. Respondent was not able to describe what services were rendered by him to receive such large payments from Consumer, nor what products were purchased for the money he received.
10. Although Consumer's signature appears on the checks, it is alleged that Consumer did not have the mental capacity to fully understand her actions or appreciate the consequences thereof. More importantly, in 2009, Consumer was declared to be legally incompetent.
11. OFIR records reflect that Consumer's money was commingled with Respondent's money in bank accounts Respondent either owned or controlled. A review of Respondent's bank account shows that Consumer's money was used to make gifts of cash to his wife, to fund his personal trust account, and to pay Respondent's personal and business expenses.
12. The money withdrawn from Consumer's investment accounts was not used for her benefit. Additionally, the money withdrawn from Consumer's checking account was not used for her benefit. According to those close to her, there was no need to surrender or liquidate any of her accounts.
13. Section 1207(1) of the Code provides, in pertinent part, that "[a]n agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent." MCL 500.1207(1).
14. Section 1239(1)(b) of the Code provides, in pertinent part, that the Commissioner may suspend or revoke licensure or take other actions for "[v]iolating any insurance laws or

violating any regulation, subpoena, or order of the Commissioner.” MCL 500.1239(1)(b).

15. Section 1239(1)(d) of the Code provides, in pertinent part, that the Commissioner may suspend or revoke licensure or take other actions for “[i]mproperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.” MCL 500.1239(1)(d).
16. Section 1239(1)(h) of the Code provides, in pertinent part, that the Commissioner may suspend or revoke licensure or take other actions for “[u]sing fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.” MCL 500.1239(1)(h).
17. Section 1242(4) of the Code provides, in pertinent part, that “[w]ithout prior hearing, the Commissioner may order summary suspension of a license if he or she finds that protection of the public requires emergency action and incorporates this finding in his or her order.” MCL 500.1242(4).
18. As a licensed resident producer, Respondent knew or had reason to know that MCL 500.1207 provides in pertinent part:

An agent shall be a fiduciary for all money received or held by the agent in his or her capacity as an agent. Failure by an agent in a timely manner to turn over the money which he or she holds in a fiduciary capacity to the persons to whom they are owed is prima facie evidence of violation of the agent's fiduciary responsibility.
19. As a licensed resident producer, Respondent knew or had reason to know that MCL 500.1239(1)(d) and (h) provides that the Commissioner may suspend or revoke an insurance producer’s license for any of the following reasons:

(d) Improperly withholding, misappropriating, or converting any money or property received in the course of doing insurance business.

(h) Using fraudulent, coercive, or dishonest practices or demonstrating incompetence, untrustworthiness, or financial irresponsibility in the conduct of business in this state or elsewhere.
20. Based upon the above facts, Respondent’s conduct violated the insurance laws of this state. Respondent improperly withheld, misappropriated, or converted money received in the course of doing insurance business when he received funds from Consumer’s various

accounts and deposited those funds into his own account for his own benefit. Respondent's conduct demonstrates fraudulent, coercive, or dishonest practices where he misappropriated a client's money for his own personal benefit and gain. Finally, Respondent breached his fiduciary duty to the client when he misappropriated a client's money for his own personal benefit and gain.

21. Additionally, based upon the above, Respondent has committed acts that are grounds for the Commissioner to order the payment of a civil fine, that restitution be made to cover losses, damages or other harm attributed to Respondent's violation of the Code, and/or that Respondent's insurance producer license be limited, suspended or revoked as may be warranted.
22. Respondent's conduct of misappropriating large sums of money from a client who was incapacitated and with whom he held a fiduciary relationship of trust warrants summary suspension of his insurance producer license to protect the public.